

STATE OF MICHIGAN
COURT OF APPEALS

KAREN MARTEL and STEVEN MARTEL,

Plaintiffs-Appellees,

and

JACQUELINE BAUER and GLEN BAUER,

Plaintiffs,

v

CINDY GAY ALLEN,

Defendant/Cross-Defendant,

and

STEAK & ALE OF MICHIGAN, INC., a/k/a
BENNIGANS,

Defendant/Third-Party
Plaintiff/Cross-Plaintiff-Appellee,

and

KHIRFAN'S INC.,

Defendant,

and

LABELLE MANAGEMENT, INC., DOUGLAS N.
LABELLE and BARTON W. LABELLE,

Third-Party Defendants-Appellants.

UNPUBLISHED

February 7, 2006

No. 260790

Genesee Circuit Court

LC No. 00-068357-NS

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action seeking damages for violation of the Michigan Liquor Control Code (MLCC), MCL 436.1101 *et seq.*, third-party defendants Douglas LaBelle, Barton LaBelle, and LaBelle Management, Inc., (the LaBelles) appeal as of right the trial court's order granting summary disposition of third-party plaintiff Steak & Ale of Michigan, Inc.'s (Steak & Ale) claim for contractual indemnification. We reverse.

The dispute at issue here arises from an automobile accident involving plaintiff Karen Martel and defendant Cindy Allen. At the time of the accident Allen was intoxicated, at least in part, as a result of drinking alcohol at a Bennigan's restaurant being managed by the Labelles pursuant to a contract with Steak & Ale, the restaurant's owner. Following the accident, Martel sued Steak & Ale for violations of the dramshop provisions of the MLCC. See MCL 436.1801. Relying on an indemnification provision contained in its management agreement with the Labelles, Steak & Ale in turn brought a third-party claim for contractual indemnification by the Labelles against any liability inuring to Steak & Ale in the suit by Martel. After interpreting the indemnity provision of the management agreement to require that the LaBelles indemnify Steak & Ale against such liability, the trial court granted summary disposition of the third-party claim for indemnification in favor of Steak & Ale.

On appeal, the LaBelles argue that the trial court erred in finding that the parties' management contract required it to indemnify Steak & Ale for its dramshop liability in this matter. We agree. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Interpretation of a contract is a question of law also reviewed de novo on appeal. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

Indemnity contracts are construed in the same manner as contracts generally. *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d 521 (2005). The purpose of contract interpretation is to enforce the parties' intent, and if the language is unambiguous, interpretation is limited to the actual words used. *Burkhardt, supra* at 656. Accordingly, a clear contract must be enforced according to its terms. *Id.* Unless otherwise defined in the policy, contractual language is given its plain and ordinary meaning. *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 471-472; 688 NW2d 523 (2004). Courts must give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 468; 663 NW2d 447 (2003).

It is not disputed that the parties' management agreement requires that the LaBelles defend, indemnify, and hold Steak and Ale harmless against "any and all" claims of liability that are "in any way whatsoever" connected to the LaBelles' management of Steak & Ale's restaurants. At issue here is the effect of the following language included within this broad obligation of indemnification: "provided, however, [Steak & Ale] shall remain statutorily responsible for violations of the Michigan Liquor Control Code and Rules at the Restaurants." Steak & Ale argues that, by providing that it would remain "responsible" for violations of the MLCC and its rules, the management agreement requires only that Steak & Ale continue to answer for its obligations under the code, and does not create an exception to the LaBelles' contractual obligation to indemnify Steak & Ale for "any and all" liability arising from its

statutory obligations. Such an interpretation is, however, inconsistent with the plain meaning of the agreement.

Because the parties did not define the term “responsible” as used in their agreement, we may refer to the dictionary to give this contractual language its plain and ordinary meaning. *English, supra* at 472. “Responsible” is cited by Black’s Law Dictionary as an adjective of “responsibility,” which is itself defined simply as “liability.” Black’s Law Dictionary (8th ed), p 1338. “Liability” is in turn defined as “[t]he quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment.” *Id.* at 932. When read in light of these definitions, the contractual language at issue plainly creates an exception to the LaBelles’ broad obligation to indemnify Steak & Ale by providing that Steak & Ale would itself remain liable for violations of the MLCC, which, as noted above, includes the dramshop provisions under which Martel brought suit. Indeed, to interpret the language otherwise would improperly render the language at issue nugatory, as it would provide no limitation on the general language regarding indemnification that it plainly restricts. See *Klapp, supra*. Thus, rather than Steak & Ale, it is the LaBelles who are entitled to summary disposition of the third-party claim for indemnification alleged by Steak & Ale.¹

We therefore reverse the trial court’s order granting summary disposition in favor of Steak & Ale and remand this matter for entry of an order granting summary disposition in favor of the LaBelles. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

¹ Given our decision in this regard, we need not reach the LaBelles’ remaining issues on appeal.